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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,366	05/16/2001	Richard A. Brauckman	TGXX-1005US	3214

7590 09/21/2005

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EXAMINER

RAMANA, ANURADHA

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/858,366	BRAUCKMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anu Ramana	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.  
2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-11, 13-18, 20-31, 33 and 35-39 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 15-18, 20-31, 33 and 35-39 is/are allowed.  
6) ☒ Claim(s) 7-10 and 14 is/are rejected.  
7) ☒ Claim(s) 11 and 13 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 2/14/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Liprie (US 5,282,781).

Liprie discloses a flexible metal tube or "catheter body" 12 having a radioactive source core or "pellet" 25 housed in a cavity at a distal end of the tube wherein a plug 27 is provided to seal the radioactive source in the cavity and the radioactive source provides radioactivity in a range of 0.1 curie to about 1 curie per cm length of the radioactive portion (col. 8, lines 60-68, col. 9, lines 1-28, col. 10, lines 17-68, col. 11, lines 1-28 and MPEP 2131.03).

It is noted that the plug 27 is capable of being removed or "is removable" if access to the cavity is desired.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liprie (US 5,282,781), as applied to claim 7, in view of Coniglione et al. (US 6,589,502).

Liprie discloses all elements of the claimed invention except for the radioactive source being immobilized in a polymeric material.

Coniglione et al. teach forming a radioactive source, such as a pellet, by mixing radioactive material in a polymeric matrix (col. 4, lines 47-55).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a pellet made of radioactive material immobilized in a polymeric matrix since it was known in the art make a radioactive source by immobilizing a radioactive material in a polymeric matrix.

Regarding claims 10 and 36, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a polymer such as a silicone or polyimide elastomer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use, herein flexibility, as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liprie (US 5,282,781), as applied to claim 7.

Liprie discloses all elements of the claimed invention except for carrier-free palladium 103 as the radiation source.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a radioactive source such as carrier-free palladium-103, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use, herein a safe source of radioactivity, as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

### ***Allowable Subject Matter***

Claims 11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 15-18, 20-30, 31, 33, 35, 37, 38 and 39 are allowed.

### ***Response to Arguments***

Applicant's arguments filed on July 1, 2005 have been fully considered but are not persuasive for the following reasons.

In response to applicant's argument that the source wire of Liprie is not a catheter, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Applicants' argument that the Liprie tube 12 is not a catheter since it is not hollow is not persuasive since tube 12 is hollow at least at its distal end (Figure 1, col. 9, lines 53-68 and col. 10, lines 1-2). Further, a "catheter" by definition need not necessarily be hollow along its entire length. Solid catheters are well known in the art, for e.g., drug-filled catheters.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anuadha Ramana*  
September 10, 2005



EDUARDO C. ROBERT  
PRIMARY EXAMINER